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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Roman S. Ferber

Serial No.: 09/833,401

Filed: April 11, 2001

For: AIR BUBBLE MASSAGE BATH MAT SYSTEM

Attorney Docket No.: HOME 0459 PUS

Group Art Unit: 3764

Examiner: Matthew C. Fenn

**REPLY BRIEF UNDER 37 C.F.R. § 41.41**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
U.S. Patent & Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Reply Brief is in response to the Examiner's Answer mailed on October 31, 2005 for the above-identified patent application.

The Appellants would like to address the Examiner's response to the two primary arguments made in the appeal - (1) whether the Haraga patent is analogous art and (2) whether the Sandrin patent teaches incorporating the foam blocks of the Cook patent.

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**Whether Haraga is Analogous Art**

The Appellants reiterate the non-analogous nature of the Haraga patent relative to the Stern and Lin patents. The Examiner takes the opposite position and maintains the patents are analogous because they each relate to hydro massage systems. The Appellants again point out that this very broad classification is insufficient.

As noted in the Appeal Brief, analogous art encompasses only the art one having ordinary skill in the art would look towards when endeavoring to solve the problem at hand. In the context of the present Appeal, the problem at hand relates to bath mats and the electrical isolation thereof. The Appellants assert that there is no motivation to look towards whirlpools (the non-analogous art - Haraga patent) when endeavoring to solve problems with bath mats (the analogous art - Lin and Stern patents).

One endeavoring to solve bath mat electrical problems would not look towards the more complex and permanent electrical systems used by whirlpools. The Examiner's assertion to the contrary is based on an inappropriate characterization of the problems addressed by the Appellants' invention. The problem should be characterized with respect to bath mat electrical isolation and not simply hydro massage. The Examiner's position is similar to argument that any electrical art is analogous if it relates to electrical isolation.

As understood from Oetiker, the field of endeavor must be defined relative to the environment wherein the problem is to be solved and not as a function of the problem itself. The environment is bath mats and the analogous art is limited to art addressing electrical isolation problems of bath mats as opposed to defining the problem simply as a function of electrical isolation in hydro massage systems.

**Whether Sandrin Teaches Incorporating Foam Blocks of Cook**

The Appellants assert the Sandrin patent cannot teach incorporating the foam blocks of the Cook patent because to do is contrary to the teachings of the Sandrin patent and would change the principle operation thereof.

Firstly, the Sandrin patent, in the background section, expressly teaches away from including rigid or other materials that cause localized pressures against the person's body (column 1, lines 40-46). The Examiner counters this point by arguing the Cook foam is non-rigid, and therefore, is not expressly excluded by the Sandrin background teachings. This argument fails as the Cook foam still provides localized pressure, at least with respect to the intended meaning of localized pressure specified within in the context of the Sandrin background.

Secondly, the Examiner proposes to insert the Cook foam into the Sandrin air chambers 31. This would change the intended operation of the Sandrin patent, which is to use the air chambers 31 to pass a fluid for blowing up the bath mat and evenly supporting the person resting thereon. (column 4, lines 40-45) The insertion of foam into the chambers 31 would prevent the chambers from being filled with fluid.

The inability to fill the chambers 31 with fluid is expressly contrary to the operation of the Sandrin patent. It is unclear how the Examiner can assert the foam would not inhibit operation of the Sandrin patent unless the Examiner asserts that it would be obvious to include the foam between the chambers 31, i.e., along the weld line 21.

The Sandrin patent, however, fails to include any motivation for including the foam between the chambers 31. The Sandrin patent only teaches using the chambers 31 for

supporting a person and not the portion between the chambers. It is inappropriate hindsight for the Examiner to assert the contrary.

Respectfully submitted,

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